

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M), a California corporation, for Authorization Pursuant to Public Utilities Code Section 851 to Approve an Existing Lease and Proposed Lease Amendment with Johns Manville to Allow Johns Manville to Upgrade its Existing Electrical System.

Application 03-05-032
(Filed May 21, 2003)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR LEASE OF REAL PROPERTY

We grant the Application of Pacific Gas & Electric Company (PG&E) for approval of the lease of a certain parcel of land in Glenn County from PG&E to Johns Manville under Public Utilities Code Section 851.¹

Background

In 1993, PG&E granted a 20-year lease ("Existing Lease") to Schuller, a predecessor in interest to Johns Manville, so that Schuller could begin operating an existing electric substation located in a portion of PG&E's Logan Creek Substation property in Glenn County, California. At that time, Schuller also purchased an existing transformer bank (a portion of the existing substation equipment), including the right to use two of PG&E's existing unoccupied underground conduits. When Schuller purchased the transformer bank, it

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

installed two sets of conductors in existing PG&E conduits between the substation and the plant. PG&E originally constructed the substation in 1976 to relieve overloads. Since 1993 the transformer bank and underground conductors have been used solely to supply electrical service to what is now Johns Manville's glass manufacturing plant.

Johns Manville is upgrading the electrical equipment that provides services to its glass manufacturing plant. As part of that upgrade, Johns Manville seeks to install new underground conductors, control cables and telecommunications cables in a new 4-foot wide by 5-foot deep trench approximately 246 feet long from its lease area, across PG&E substation property, out to Country Road 48. The property to be trenched is relatively level, barren ground with a paved road across a portion of it. Johns Manville will lay three sets of conductors in the trench, cover them with soil, and pour on a cement cap. After the cap has cured, Johns Manville will bury the cables in the trench, fill it and restore the area and repave as necessary.

PG&E is seeking to amend the existing lease to allow the building of the trench and to grant Johns Manville use of an existing paved access road.

The Application

On May 21, 2003, PG&E filed the application, seeking authorization from the Commission to amend the Existing Lease to permit Johns Manville to dig the trench and use the existing paved access road. The application is made under Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the

public.² Leasing property that is no longer necessary or useful in the provision of utility service is a disposition of property and therefore requires approval under Section 851.³

² Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

³ As the Commission previously stated: “The language of Section 851 is expansive, and we conclude that it makes sense to read “encumber” in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility’s plant, system, or property.” (D.92-07-007, 45 CPUC 2d 24, 29.)

Analysis and Action

We grant PG&E's request under Section 851 to amend the Existing Lease. The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

(D.02-01-058.) We have reviewed the proposed transaction and find it does not interfere with PG&E's operation or affect its ability to provide service to its customers. The additional land to be leased to Johns Manville for construction of the trench is excess to the utility's needs. The lease rental will financially benefit the ratepayers. Allowing Johns Manville to provide increased electric service to its glass manufacturing plant is a productive purpose. Accordingly, the transaction is in the public interest and should be approved.

Environmental Review

The California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereafter CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decisionmakers and the public about the potential significant environmental effects of the proposed activities. (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (i.e., grant Section 851 authority) without which the proposed activity cannot proceed, and because the activity has the potential to result in either a direct physical change in the environment or an indirect physical change in the environment (CEQA Guideline Section 15378), the application is subject to CEQA and the Commission must act as either a lead or responsible agency under CEQA. The lead agency is

the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines Section 15051(b).) A responsible agency is required to consider the environmental consequences of a project that is subject to its discretionary approval and in particular, to consider the lead agency's environmental documents and findings before acting upon or approving a project. (CEQA Guideline Section 15050(b).)

In this instance the activity in question will involve Johns Manville upgrading existing electrical equipment that provides service to its glass manufacturing plant. In order to do this, existing overhead distribution system will be converted to underground facilities to be placed in a 246 foot long trench. The upgrade will involve installation of new conductors. Telecommunications cable will also be placed in the trench. The trench will be backfilled and the area restored. The existing overhead facilities will be removed.

Normally, we would look to whether the local City or County acted as lead agency in conducting any CEQA review. Here, a letter from Glenn County Public Works verifies that that the county has no ordinance that requires it to approve or issue a permit for trenching or grading (i.e., no discretionary decision). Consequently the County has no CEQA requirement for the activity.

Because we are the first agency with a discretionary decision involving the activity, we will independently consider CEQA in this matter. Based on our understanding of the proposed activity, we believe it falls within the categorical exemptions provided for existing facilities and replacement or reconstruction activities. Specifically, CEQA Guideline Section 15302(d) provides a categorical exemption for the "conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing

prior to the undergrounding.” Accordingly, we find this activity to be exempt from CEQA review.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for Johns Manville to upgrade electrical service to its existing glass manufacturing plant in Glenn County, an amended lease from PG&E is required.
2. Amendment of the Existing Lease is consistent with the current uses of PG&E property.
3. The Amended Lease will not impair PG&E’s ability to provide service to the public.
4. The Commission is the lead agency for environmental review under CEQA.
5. Glenn County has no discretionary approval required for the grading or trenching activity and therefore has no CEQA responsibilities.
6. CEQA Guideline Sections 15032(d) provides an exemption from CEQA review for undergrounding projects where the surface is restored to the condition existing prior to the undergrounding.
7. Johns Manville will restore the surface of the property to its condition existing prior to the undergrounding.
8. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Authorizing the lease amendment is in the public interest.
2. The proposed amended lease is exempt from CEQA review pursuant to CEQA Guidelines Section 15032(d).

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company to amend an existing lease to Johns Manville is approved.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.